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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Redevelopment of Spectrum
to Encourage Innovation in
the Use of New
Telecommunications
Technologies

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ET Docket No. 92-9

RM-7981

RM-8004

TO: The Commission

COMMENTS OF THE
EDISON ELECTRIC INSTITUTE

Pursuant to Section 1.415 of the Commission's Rules, the Edison Electric Institute (EEI) hereby submits its Comments on the Third Notice of Proposed Rule Making, FCC 92-437, released October 16, 1992 (Third NPRM), in the above-captioned proceeding. By the Third NPRM, the Commission has requested comment on some of the details necessary to implement the 2 GHz transition rules which were adopted in the simultaneously-released First Report and Order in this proceeding.

I. Introduction

EEI is the association of the nation's investor-owned electric utilities. EEI's member companies serve 98 percent of all customers served by the investor-owned segment of the industry and 75 percent of all electric customers in the country. In addition, EEI's members generate 78 percent of all electricity in the nation.

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EEI members use private microwave telecommunications facilities licensed in the 1850-2200 MHz (2 GHz) band extensively as an integral part of their operations related to the generation, transmission, and distribution of electricity. Any disruption or degradation of these microwave facilities could adversely impact the continued provision of high quality and reliable electricity to the nation. EEI is therefore pleased to have this opportunity to comment on the Commission's proposals in this proceeding.

II. Transition Framework Adopted

In the First Report and Order (R&O), the Commission adopted a transition framework for the orderly migration of incumbent microwave systems from the 2 GHz band in order to facilitate the introduction of emerging telecommunications technologies, while at the same time ensuring that microwave licensees displaced from the 2 GHz band are made "whole," both operationally and financially. The rules, as adopted by the Commission, provide that: (1) incumbent licensees and new service licensees may negotiate voluntarily over the terms for relocating incumbent users to other bands or alternative media; and (2) after a specified period of time, a new service licensee may request mandatory relocation of an incumbent microwave system, provided that the new facilities provide the same degree of reliable service and all relocation costs are borne by the new service provider.

III. Rules Should Encourage Flexible Negotiations

In order to implement this transition framework, the Commission should encourage flexible negotiations between new service providers and incumbent microwave licensees. EEI believes that adoption of rules emphasizing voluntary negotiations will lead to successful relocations in the vast majority of cases with no need for dispute-resolution procedures. As EEI and others have emphasized throughout this proceeding, private microwave facilities are a business "tool," and not a commercial "franchise."

In order to facilitate successful negotiations, EEI believes that a lengthy voluntary negotiation period must be adopted. A lengthy negotiation period will encourage the parties to resolve differences voluntarily; it will stimulate the development of spectrum-sharing techniques; it will minimize the need for the Commission to intervene in what could be up to 29,000 relocation decisions; and it will allow the marketplace to establish fair compensation and reasonable relocation arrangements, which could serve as a body of experience to be applied in contested cases.

A. The FCC Should Adopt a Sliding Period of Negotiations

EEI supports UTC's recommendation that the FCC adopt a "sliding period" of negotiations of at least five (5) years, commencing with the date each new service license is granted in

any particular area. That is, during the first five years of each new service license, the new service licensee would be permitted to negotiate with incumbent microwave licensees potentially affected by its system. Five years after license grant, the new service licensee could enter a voluntary agreement with incumbent microwave licensees or could invoke the mandatory relocation procedures.

By delaying the mandatory relocation procedures until after the first five years of each license term, all incumbent microwave users will have a reasonable period to discuss relocation before being subjected to a mandatory relocation program. Likewise, a "sliding period" will ensure that all new service licensees are subject to the same obligation to attempt voluntary negotiations before invoking the Commission's procedures.

B. Comparable Facilities Should Be Individually Negotiated

The Commission has requested comment on how it should define "comparable alternative facilities" in assessing the reasonableness of a new service licensee's relocation proposal. EEI, questions the ability of the Commission to define comparability in a satisfactory manner for all incumbent microwave licensees.

There are so many variables involved in the design and operation of 2 GHz microwave systems that it would be unwise for the Commission to try to list, in advance, all the criteria by which replacement facilities should be evaluated for "comparability." Indeed, with over 30 years of licensing history and over 29,000 microwave systems licensed in the 2 GHz band, it would be an arduous task for the Commission to catalogue all the factors that microwave users consider important in the design and operation of their microwave systems.

Accordingly, EEI agrees with UTC that the FCC should not define "comparable alternative facilities" by reference to any single, inflexible standard. Rather, the Commission should create a process that permits and encourages parties to negotiate privately and to identify the factors that each microwave licensee considers important to an assessment of "comparability."

C. Disputes Should Be Resolved Through Mediation

In the few situations where mandatory relocation procedures must be invoked, EEI recommends that mediation be used as a first step in resolving points of disagreement. EEI considers mediation to be a particularly appropriate dispute resolution mechanism for conflicts likely to arise under this proceeding, since mediation is recommended in disputes with extremely complex facts or legal issues; in disputes in which the parties' positions are divergent and a neutral party could expedite

settlement; and in disputes in which communication between the parties has broken down. Moreover, mediation provides the parties with complete control over the process, with its aim at settlement, not further litigation.

D. Tax Certificates Should Be Used As An Incentive for Voluntary Settlements

EEI recommends that the Commission use tax certificates as a regulatory incentive for parties to reach voluntary settlements on relocation issues. A tax certificate should be granted to any incumbent licensee who voluntarily agrees to relocation.

IV. Conclusion

The best method of ensuring that existing 2 GHz microwave users are adequately protected while at the same time expediting the development of emerging telecommunications technologies, is reliance on marketplace mechanisms. Accordingly, the Commission should promote voluntary negotiations through the adoption of a "5-year sliding period" of negotiations triggered by the grant of individual new service licenses. Further, the Commission should not attempt to specifically define "comparable alternative facilities" but instead should allow parties to negotiate privately and to identify the factors that each microwave licensee considers important to an assessment of "comparability". The FCC should also utilize the granting of tax certificates as a regulatory incentive for voluntary negotiations.

Finally, in the few situations where voluntary negotiations fail to achieve a satisfactory result and mandatory relocation procedures must be invoked, EEI recommends that mediation be used as a first step in resolving points of disagreement.

WHEREFORE, THE PREMISES CONSIDERED, the Edison Electric Institute respectfully requests the Commission to consider these Comments in acting on the subject Third Notice of Proposed Rule Making.

Respectfully submitted,
Edison Electric Institute

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